

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

RONALD PHIPPS,

Plaintiff,

9:07-CV-0372
(TJM)(GJD)

v.

THE STATE OF NEW YORK, ANDREW CUOMO,
Defendants.

APPEARANCES:

RONALD PHIPPS
93-A-6162
Clinton Correctional Facility
Box 2001
Dannemora, NY 12929
Plaintiff, *pro se*

THOMAS J. McAVOY
SENIOR U.S. DISTRICT JUDGE

DECISION and ORDER

Presently before the Court is a pro se civil rights complaint filed by Plaintiff Ronald Phipps and transferred to this District from the Eastern District of New York by Order of United States Magistrate Judge Lois Bloom. Dkt. No. 2. Plaintiff, who is currently incarcerated at Clinton Correctional Facility, has not submitted an *in forma pauperis* application and has not paid the \$350.00 filing fee.¹

In his *pro se* complaint, Plaintiff alleges that during annual institutional lockdowns at Clinton Correctional Facility, his constitutional rights were violated because, among other things, he was denied the ability to take daily showers, the ability to use the telephone, adequate means, and access to the law library. For a complete statement of Plaintiff's claims, reference is made to

¹Plaintiff has filed two previous actions in this District. *See Phipps v. Senkowski* 6:96-CV-0596 and *Phipps v. Attorney General's Office*, 9:07-CV-0132 (pending).

the complaint.

Plaintiff has listed New York State as a Defendant in this action. It is clear, however, that Plaintiff's claims against New York State are barred by the Eleventh Amendment to the United States Constitution. *See U.S. Const., Amend. XI; Hans v. Louisiana*, 134 U.S. 1 (1890); *Farid v. Smith*, 850 F.2d 917, 920-21 (2d Cir. 1988); *Amankwaah v. Cayuga County*, 1992 WL 296459 at *2-3 (N.D.N.Y. Oct. 16, 1995) (McCurn, C.J.). Therefore, Defendant New York State must be dismissed from this action.

It is well established that federal district courts possess the power to administer their dockets in a manner that conserves scarce judicial resources and promotes the efficient and comprehensive disposition of cases. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976). Accordingly, a federal court may dismiss a suit "for reasons of wise judicial administration ... whenever it is duplicative of a parallel action already pending in another federal court" or in the same federal court. *Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir.1993) (quoting *Ridge Gold Standard Liquors, Inc. v. Joseph E. Seagram & Sons, Inc.*, 572 F.Supp. 1210, 1213 (N.D.Ill.1983)).

Curtis v. DiMaio, 46 F.Supp.2d 206, 215 (E.D.N.Y. 1999).

Plaintiff's complaint clearly demonstrates that he brought this action in the Eastern District of New York because he erroneously thought his previous action (*Phipps v. Attorney General's Office*, 9:07-CV-0132 ("*Phipps I*")) was dismissed by Judge Hurd's March 14, 2007 Order.² Dkt. No. 1 at 1. In this action, Plaintiff is attempting to litigate the same claims he is making in *Phipps I*. Plaintiff cannot litigate the same claims in multiple actions. Therefore, the Court dismisses this action.

Therefore, this action must be dismissed as Plaintiff is attempting to litigate the same

²The Court notes that Magistrate Judge Peebles granted Plaintiff until April 20, 2007 to file an amended complaint in that action. *See Phipps I*, Dkt. No. 9.

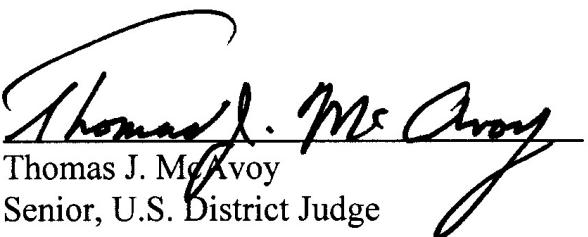
claims in two different actions.

WHEREFORE, it is hereby

ORDERED, that this action is **DISMISSED**, and it is further

ORDERED, that the Clerk shall serve a copy of this Order on Plaintiff.

Dated: April 26, 2007



Thomas J. McAvoy
Senior, U.S. District Judge